

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the public health law and the social services law, in relation to improving the safety and quality of nursing homes in New York state; and to amend part E of chapter 56 of the laws of 2013 amending the public health law relating to the general public health work program, in relation to the effectiveness thereof (Part __);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 PART __

2 Section 1. Subdivision 1 of section 12 of the public health law, as
3 amended by section 16 of part A of chapter 58 of the laws of 2008, is
4 amended and a new paragraph (e) is added to read as follows:

5 1. (a) Except as provided in paragraphs (b) and (c) of this subdivi-
6 sion, any person who violates, disobeys or disregards any term or
7 provision of this chapter or of any lawful notice, order or regulation
8 pursuant thereto for which a civil penalty is not otherwise expressly
9 prescribed by law, shall be liable to the people of the state for a
10 civil penalty [of] not to exceed [two] ten thousand dollars for every
11 such violation.

12 (b) The penalty provided for in paragraph (a) of this subdivision may
13 be increased to an amount not to exceed [five] fifteen thousand dollars
14 for a subsequent violation if the person committed the same violation,
15 with respect to the same or any other person or persons, within twelve
16 months of the initial violation for which a penalty was assessed pursu-

1 ant to paragraph (a) of this subdivision and said violations were a
2 serious threat to the health and safety of an individual or individuals.

3 (c) The penalty provided for in paragraph (a) of this subdivision may
4 be increased to an amount not to exceed [ten] twenty-five thousand
5 dollars if the violation directly results in serious physical harm to
6 any patient or patients.

7 (d) Effective on and after April first, two thousand [eight] twenty-
8 one the comptroller is hereby authorized and directed to deposit amounts
9 collected in excess of [two] ten thousand dollars but less than fifteen
10 thousand dollars per violation to the patient safety center account to
11 be used for purposes of the patient safety center created by title two
12 of article twenty-nine-D of this chapter.

13 (e) Effective on and after April first, two thousand twenty-one,
14 amounts collected for violations of article twenty-eight, thirty-six, or
15 forty of this chapter equal to or in excess of fifteen thousand dollars
16 per violation may be used by the commissioner, notwithstanding section
17 one hundred twelve or one hundred sixty-three of the state finance law,
18 for initiatives that, in the discretion of the commissioner, are likely
19 to improve the quality of care or quality of life of patients or resi-
20 dents served by providers licensed pursuant to article twenty-eight,
21 thirty-six, or forty of this chapter. Such purposes may include, but are
22 not limited to, surveillance and inspection activities; activities
23 designed to improve the quality, performance and compliance of poorly
24 performing providers; training and education of provider staff; and
25 improving patient, resident, and consumer involvement in initiatives to
26 improve patient and resident quality of care or quality of life.

1 § 2. Subdivision 1 of section 12 of the public health law, as amended
2 by chapter 190 of the laws of 1990, is amended and four new paragraphs
3 (b), (c), (d) and (e) are added to read as follows:

4 1. [Any] (a) Except as provided in paragraphs (b) and (c) of this
5 subdivision, any person who violates, disobeys or disregards any term or
6 provision of this chapter or of any lawful notice, order or regulation
7 pursuant thereto for which a civil penalty is not otherwise expressly
8 prescribed by law, shall be liable to the people of the state for a
9 civil penalty [of] not to exceed [two] ten thousand dollars for every
10 such violation.

11 (b) The penalty provided for in paragraph (a) of this subdivision may
12 be increased to an amount not to exceed fifteen thousand dollars for a
13 subsequent violation if the person committed the same violation, with
14 respect to the same or any other person or persons, within twelve months
15 of the initial violation for which a penalty was assessed pursuant to
16 paragraph (a) of this subdivision and said violations were a serious
17 threat to the health and safety of an individual or individuals.

18 (c) The penalty provided for in paragraph (a) of this subdivision may
19 be increased to an amount not to exceed twenty-five thousand dollars if
20 the violation directly results in serious physical harm to any patient
21 or patients.

22 (d) Effective on and after April first, two thousand twenty-one the
23 comptroller is hereby authorized and directed to deposit amounts
24 collected in excess of ten thousand dollars but less than fifteen thou-
25 sand dollars per violation to the patient safety center account to be
26 used for purposes of the patient safety center created by title two of
27 article twenty-nine-D of this chapter.

1 (e) Effective on and after April first, two thousand twenty-one,
2 amounts collected for violations of article twenty-eight, thirty-six, or
3 forty of this chapter equal to or in excess of fifteen thousand dollars
4 per violation may be used by the commissioner, notwithstanding section
5 one hundred twelve or one hundred sixty-three of the state finance law,
6 for initiatives that, in the discretion of the commissioner, are likely
7 to improve the quality of care or quality of life of patients or resi-
8 dents served by providers licensed pursuant to article twenty-eight,
9 thirty-six, or forty of this chapter. Such purposes may include, but are
10 not limited to, surveillance and inspection activities; activities
11 designed to improve the quality, performance and compliance of poorly
12 performing providers; training and education of provider staff; and
13 improving patient, resident, and consumer involvement in initiatives to
14 improve patient and resident quality of care or quality of life.

15 § 3. Subdivision 2 of section 12-b of the public health law, as
16 amended by section 17 of part A of chapter 58 of the laws of 2008, is
17 amended to read as follows:

18 2. A person who wilfully violates any provision of this chapter, or
19 any regulation lawfully made or established by any public officer or
20 board under authority of this chapter, the punishment for violating
21 which is not otherwise prescribed by this chapter or any other law, is
22 punishable by imprisonment not exceeding one year, or by a fine not
23 exceeding [ten] twenty-five thousand dollars or by both. Effective on
24 and after April first, two thousand [eight] twenty-one the comptroller
25 is hereby authorized and directed to deposit amounts collected in excess
26 of [two] ten thousand dollars but less than fifteen thousand dollars per
27 violation to the patient safety center account to be used for purposes
28 of the patient safety center created by title two of article twenty-

1 nine-D of this chapter. Effective on and after April first, two thousand
2 twenty-one, amounts collected for violations of article twenty-eight,
3 thirty-six, or forty of this chapter equal to or in excess of fifteen
4 thousand dollars per violation may be used by the commissioner pursuant
5 to paragraph (e) of subdivision one of section twelve of this chapter.

6 § 4. Subdivision 2 of section 12-b of the public health law, as
7 amended by chapter 463 of the laws of 1969, is amended to read as
8 follows:

9 2. A person who wilfully violates any provision of this chapter, or
10 any regulation lawfully made or established by any public officer or
11 board under authority of this chapter, the punishment for violating
12 which is not otherwise prescribed by this chapter or any other law, is
13 punishable by imprisonment not exceeding one year, or by a fine not
14 exceeding [two] twenty-five thousand dollars or by both. Effective on
15 and after April first, two thousand twenty-one the comptroller is hereby
16 authorized and directed to deposit amounts collected in excess of ten
17 thousand dollars but less than fifteen thousand dollars per violation to
18 the patient safety center account to be used for purposes of the patient
19 safety center created by title two of article twenty-nine-D of this
20 chapter. Effective on and after April first, two thousand twenty-one,
21 amounts collected for violations of article twenty-eight, thirty-six, or
22 forty of this chapter equal to or in excess of fifteen thousand dollars
23 per violation may be used by the commissioner pursuant to paragraph (e)
24 of subdivision one of section twelve of this chapter.

25 § 5. Paragraph (c) of subdivision 4 of section 206 of the public
26 health law, as amended by chapter 602 of the laws of 2007, is amended to
27 read as follows:

1 (c) assess any penalty prescribed for a violation of or a failure to
2 comply with any term or provision of this chapter or of any lawful
3 notice, order or regulation pursuant thereto, not exceeding [two] twen-
4 ty-five thousand dollars for every such violation or failure, which
5 penalty may be assessed after a hearing or an opportunity to be heard;

6 § 6. The opening paragraph of subdivision 11 of section 2801-a of the
7 public health law, as amended by section 57 of part A of chapter 58 of
8 the laws of 2010, is amended and a new paragraph (e) is added to read as
9 follows:

10 Any person filing a proposed certificate of incorporation, articles of
11 organization or an application for establishment of a residential health
12 care facility for approval of the public health and health planning
13 council shall file with the commissioner such information [on the owner-
14 ship of the property interests in such facility as shall] as may be
15 prescribed by regulation, including, but not limited to, the following:

16 (e) Information pertaining to staffing, the source of staffing, and
17 staff skill mix.

18 § 7. Section 2803-w of the public health law, as added by chapter 677
19 of the laws of 2019, is amended to read as follows:

20 § 2803-w. Independent quality monitors and quality improvement organ-
21 izations for residential health care facilities. 1. The department may
22 require a residential health care facility or group of residential
23 health care facilities to contract with an independent quality monitor
24 selected, and on reasonable terms determined, by the department, pursu-
25 ant to a selection process conducted notwithstanding [sections] section
26 one hundred twelve or one hundred sixty-three of the state finance law,
27 for purposes of monitoring the operator's compliance with a written and
28 mandatory corrective plan and reporting to the department on the imple-

1 mentation of such corrective action, when the department has determined
2 in its discretion that operational deficiencies exist at such facility
3 that show:

4 [1.] (a) a condition or conditions in substantial violation of the
5 standards for health, safety, or resident care established in law or
6 regulation that constitute a danger to resident health or safety;

7 [2.] (b) a pattern or practice of habitual violation of the standards
8 of health, safety, or resident care established in law or regulation; or

9 [3.] (c) any other condition dangerous to resident life, health, or
10 safety. Such written mandatory corrective plans shall include caps on
11 administrative and general costs that are unrelated to providing direct
12 care (including providing at least minimum staffing levels as determined
13 by the department) or care coordination.

14 2. Where, in two consecutive inspections, regardless of the timeframe
15 between such inspections, a residential health care facility has been
16 issued more than one statement of deficiencies citing violations of the
17 department's regulations concerning infection control, such residential
18 health care facility shall, at its own expense, contract with a quality
19 improvement organization, or such other independent quality monitor
20 selected by the department, to assess and resolve such facility's
21 infection control deficiencies, including establishing new infection
22 control policies and procedures in consultation with such organization.
23 The administrator, director of nursing, and medical director of such
24 residential health care facility shall work with and provide necessary
25 support, facility access, and information to such organization to effec-
26 tuate resolution of infection control deficiencies.

27 3. For the purposes of this section:

1 (a) "Quality improvement organization" shall mean an organization
2 operating with the purpose of improving healthcare quality for Medicare
3 beneficiaries, which has been designated by the United States Department
4 of Health and Human Services, Centers of Medicare and Medicaid Services
5 through the Quality Improvement Organization Program; and

6 (b) "Independent quality monitor" shall mean an organization, other
7 than a quality improvement organization, which has been selected by the
8 department pursuant to subdivision one or two of this section.

9 § 8. The public health law is amended by adding a new section 2828 to
10 read as follows:

11 § 2828. Residential health care facilities; excess revenue. 1.
12 Notwithstanding any law to the contrary, the department shall promulgate
13 regulations governing the disposition of revenue in excess of expenses
14 for residential health care facilities. Such regulations shall require
15 that a minimum of seventy percent of revenue be spent on direct resident
16 care, and that forty percent of revenue shall be spent on resident-fac-
17 ing staffing, provided that amounts spent on resident-facing staffing
18 shall be included as a part of amounts spent on direct resident care.
19 Beginning on and after January first, two thousand twenty-two, fifteen
20 percent of costs associated with resident-facing staffing that is
21 contracted out by a facility shall be deducted from the calculation of
22 the amount spent on resident-facing staffing and direct resident care.
23 Such regulations shall further include at a minimum that any residential
24 health care facility for which total operating revenue exceeds total
25 operating and non-operating expenses by more than five percent of total
26 operating and non-operating expenses, or that fails to spend the minimum
27 amount necessary to comply with the minimum spending standards for resi-
28 dent-facing staffing or direct resident care, calculated on an annual

1 basis, shall expend such excess revenue, or the difference between the
2 minimum spending requirement and the actual amount of spending on resi-
3 dent-facing staffing or direct care staffing, as the case may be, in a
4 manner to be determined by such regulations, by October first of the
5 following year. In the event any residential health care facility fails
6 to spend any excess revenue in the manner directed by such regulations
7 by October first of the following year, such excess revenue shall be
8 payable to the state by November first of such year. The department
9 shall collect such payments by methods including, but not limited to,
10 deductions or offsets from payments made pursuant to the Medicaid
11 program.

12 2. For the purposes of this section and section twenty-eight hundred
13 twenty-eight-a of this article, the following terms shall have the
14 following meanings:

15 (a) "Revenue" shall mean the total operating revenue from all payer
16 sources as reported in the residential health care facility cost reports
17 submitted to the department.

18 (b) "Expenses" shall include all operating and non-operating expenses,
19 before extraordinary gains, reported in cost reports submitted pursuant
20 to this section, except as expressly excluded by regulations and/or this
21 section. Such exclusions shall include, but not be limited to, any
22 related party transaction to the extent that the value of such trans-
23 action is greater than fair market value, and the payment of compen-
24 sation for employees who are not actively engaged in or providing
25 services at the facility.

26 (c) "Direct resident care" shall exclude, at a minimum and without
27 limitation, capital depreciation, rent and leases, fiscal services, and
28 administrative services.

1 (d) "Resident-facing staffing" shall include all staffing expenses in
2 the ancillary and program services categories on exhibit h of the resi-
3 dential health care reports as in effect on February fifteenth, two
4 thousand twenty-one; provided that the department may by regulation, or
5 by emergency regulation, adjust such staffing expenses to align with any
6 change to the residential health care reports.

7 § 8-a. The public health law is amended by adding a new section 2828-a
8 to read as follows:

9 § 2828-a. Excess revenues for management salaries. Within the amounts
10 prescribed by section twenty-eight hundred twenty-eight of this article,
11 a salary for any executive or managerial position which does not involve
12 direct resident care shall be limited by regulation by the department
13 based upon the number of beds for resident care at such facility. In any
14 event such salary shall not exceed two hundred fifty thousand dollars
15 annually. Provided further, notwithstanding any other law to the contra-
16 ry, a residential care facility shall not expend more than fifteen
17 percent of expenses on executive or managerial salaries, and the depart-
18 ment shall be authorized to promulgate regulations to effectuate this
19 section.

20 § 9. Section 2860 of the public health law is amended by adding three
21 new subdivisions 3, 4 and 5 to read as follows:

22 3. A company shall post maximum rates to be charged for facilities and
23 services, fixed pursuant to subdivision one of this section, on a
24 publicly accessible website. Such posting shall be updated on an annual
25 basis no later than April first of each year. Such posting shall detail
26 rates for each non-governmental payer source.

27 4. A company shall: (a) publicly list all owners on a website main-
28 tained by the facility and shall submit such list to the department for

1 posting on its website and update such information within thirty days of
2 any change or transaction affecting ownership; (b) publicly disclose on
3 such facility's website and regularly update the name and business
4 address of any landlord of such facility's premises; and (c) publicly
5 provide a summary of all contracts for provision of goods or services
6 for which such facility pays with any portion of Medicaid or Medicare
7 funds or other agreements entered into by the company on such facility's
8 website within thirty days of execution of such agreement or contract.

9 5. The commissioner may promulgate such regulations as may be deemed
10 necessary or appropriate to implement subdivisions three and four of
11 this section.

12 § 10. Subdivision 7 of section 460-d of the social services law, as
13 added by chapter 669 of the laws of 1977, paragraph (a) as amended by
14 chapter 719 of the laws of 1989, paragraph (b) as amended by chapter 524
15 of the laws of 1984, and paragraph 2 of paragraph (b) as amended by
16 chapter 733 of the laws of 1994, is amended to read as follows:

17 7. (a) The department shall adopt regulations establishing civil
18 penalties of up to [one] ten thousand dollars per day to be assessed
19 against all adult care facilities except facilities operated by a social
20 services district for violations of (i) regulations of the department
21 pertaining to the care of residents in such facilities, (ii) paragraph
22 (a) of subdivision three of section four hundred sixty-one-a of this
23 chapter, or (iii) an order issued pursuant to subdivision eight of this
24 section. The regulations shall specify the violations subject to penalty
25 and the amount of the penalty to be assessed in connection with each
26 such violation and shall specify that only civil penalties of up to
27 [one] ten thousand dollars per day per violation shall be assessed
28 pursuant to this paragraph against an adult care facility found respon-

1 sible for an act of retaliation or reprisal against any resident,
2 employee, or other person for having filed a complaint with or having
3 provided information to any long term care patient ombudsman functioning
4 in accordance with section five hundred forty-four or five hundred
5 forty-five of the executive law.

6 (b) [(1)] In addition to any other civil or criminal penalty provided
7 by law, the department shall have the power to assess civil penalties in
8 accordance with its regulations adopted pursuant to paragraph (a) of
9 this subdivision, after a hearing conducted in accordance with the
10 procedures established by regulations of the department. Such procedures
11 shall require that notice of the time and place of the hearing, together
12 with a statement of charges of violations, shall be served in person or
13 by certified mail addressed to the facility at least thirty days prior
14 to the date of the hearing. The statement of charges of violations shall
15 set forth the existence of the violations, the amount of penalty for
16 which it may become liable and the steps which must be taken to rectify
17 the violation and, where applicable, a statement that the department
18 contends that a penalty may be imposed under this paragraph regardless
19 of rectification. An answer to the charges of violations, in writing,
20 shall be filed with the department, not less than ten days prior to the
21 date of hearing. The answer shall notify the department of the facili-
22 ty's position with respect to each of the charges and shall include all
23 matters which if not disclosed in the answer would be likely to take the
24 department by surprise. The commissioner, or a member of his staff who
25 is designated and authorized by him to hold such hearing, may in his
26 discretion allow the facility to prove any matter not included in the
27 answer. [Where the facility satisfactorily demonstrates that it either
28 had rectified the violations within thirty days of receiving written

1 notification of the results of the inspection pursuant to section four
2 hundred sixty-one-a of this chapter, or had submitted within thirty days
3 an acceptable plan for rectification and was rectifying the violations
4 in accordance with the steps and within the additional periods of time
5 as accepted by the department in such plan, no penalty shall be imposed,
6 except as provided in subparagraph two of this paragraph.

7 (2) Rectification shall not preclude the assessment of a penalty if
8 the department establishes at a hearing that a particular violation,
9 although corrected, endangered or resulted in harm to any resident as
10 the result of:

11 (i) the total or substantial failure of the facility's fire detection
12 or prevention systems, or emergency evacuation procedures prescribed by
13 department safety standard regulations;

14 (ii) the retention of any resident who has been evaluated by the resi-
15 dent's physician as being medically or mentally unsuited for care in the
16 facility or as requiring placement in a hospital or residential health
17 care facility and for whom the operator is not making persistent efforts
18 to secure appropriate placement;

19 (iii) the failure in systemic practices and procedures;

20 (iv) the failure of the operator to take actions as required by
21 department regulations in the event of a resident's illness or accident;

22 (v) the failure of the operator to provide at all times supervision of
23 residents by numbers of staff at least equivalent to the night staffing
24 requirement set forth in department regulations; or

25 (vi) unreasonable threats of retaliation or taking reprisals, includ-
26 ing but not limited to unreasonable threats of eviction or hospitaliza-
27 tion against any resident, employee or other person who makes a
28 complaint concerning the operation of an adult care facility, partic-

1 ipates in the investigation of a complaint or is the subject of an
2 action identified in a complaint.

3 The department shall specify in its regulations those regulations to
4 which this subparagraph two shall apply.

5 (3) In assessing penalties pursuant to this paragraph, the department
6 shall consider promptness of rectification, delay occasioned by the
7 department, and the specific circumstances of the violations as mitigat-
8 ing factors.]

9 (c) Upon the request of the department, the attorney general may
10 commence an action in any court of competent jurisdiction against any
11 facility subject to the provisions of this section, and against any
12 person or corporation operating such facility, for the recovery of any
13 penalty assessed by the department in accordance with the provisions of
14 this subdivision.

15 (d) Any such penalty assessed by the department may be released or
16 compromised by the department before the matter has been referred to the
17 attorney general, and where such matter has been referred to the attor-
18 ney general, any such penalty may be released or compromised and any
19 action commenced to recover the same may be settled and discontinued by
20 the attorney general with the consent of the department.

21 § 11. Paragraph (a) of subdivision 9 of section 460-d of the social
22 services law, as amended by chapter 558 of the laws of 1999, is amended
23 to read as follows:

24 (a) The department shall have authority to impose a civil penalty not
25 exceeding [one] ten thousand dollars per day against, and to issue an
26 order requiring the closing of, after notice and opportunity to be
27 heard, any facility which does not possess a valid operating certificate
28 issued by the department and is an adult care facility subject to the

1 provisions of this article and the regulations of the department. A
2 hearing shall be conducted in accordance with procedures established by
3 department regulations which procedures shall require that notice of the
4 determination that the facility is an adult care facility and the
5 reasons for such determination and notice of the time and place of the
6 hearing be served in person on the operator, owner or prime lessor, if
7 any, or by certified mail, return receipt requested, addressed to such
8 person and received at least twenty days prior to the date of the hear-
9 ing. If such operator, owner or prime lessor, if any, is not known to
10 the department, then service may be made by posting a copy thereof in a
11 conspicuous place within the facility or by sending a copy thereof by
12 certified mail, return receipt requested, addressed to the facility. A
13 written answer to the notice of violation may be filed with the depart-
14 ment not less than five days prior to the date of the hearing. Demon-
15 stration by the facility that it possessed an operating certificate
16 issued pursuant to this article, article twenty-eight of the public
17 health law or article sixteen, twenty-three, thirty-one or thirty-two of
18 the mental hygiene law at the time the hearing was commenced shall
19 constitute a complete defense to any charges made pursuant to this
20 subdivision.

21 § 12. Subdivision (c) of section 122 of part E of chapter 56 of the
22 laws of 2013 amending the public health law relating to the general
23 public health work program, as amended by section 7 of part E of chapter
24 57 of the laws of 2019, is amended to read as follows:

25 (c) section fifty of this act shall take effect immediately [and shall
26 expire nine years after it becomes law];

27 § 13. Subdivisions 2, 3, 5 and 6 of section 2806-a of the public
28 health law, as added by section 50 of part E of chapter 56 of the laws

1 of 2013, and paragraph (a) of subdivision 2 as amended by section 8 and
2 subparagraph (iii) of paragraph (c) of subdivision 5 as amended by
3 section 9 of part K of chapter 57 of the laws of 2015, are amended to
4 read as follows:

5 2. (a) In the event that: (i) a facility seeks extraordinary financial
6 assistance and the commissioner finds that the facility is experiencing
7 serious financial instability that is jeopardizing existing or continued
8 access to essential services within the community, or (ii) the commis-
9 sioner finds that there are conditions within the facility that [seri-
10 ously] endanger the life, health or safety of residents or patients, the
11 commissioner may appoint a temporary operator to assume sole control and
12 sole responsibility for the operations of that facility, or (iii) the
13 commissioner finds that there has been an improper delegation of manage-
14 ment authority by the governing authority or operator of a general
15 hospital, the commissioner shall appoint a temporary operator to assume
16 sole control and sole responsibility for the operations of that facili-
17 ty. The appointment of the temporary operator shall be effectuated
18 pursuant to this section and shall be in addition to any other remedies
19 provided by law.

20 (b) The established operator of a facility may at any time request the
21 commissioner to appoint a temporary operator. Upon receiving such a
22 request, the commissioner may, if he or she determines that such an
23 action is necessary to restore or maintain the provision of quality care
24 to the residents or patients or alleviate the facility's financial
25 instability, enter into an agreement with the established operator for
26 the appointment of a temporary operator to assume sole control and sole
27 responsibility for the operations of that facility.

1 3. (a) A temporary operator appointed pursuant to this section shall,
2 prior to his or her appointment as temporary operator, provide the
3 commissioner with a work plan satisfactory to the commissioner to
4 address the facility's deficiencies and serious financial instability
5 and a schedule for implementation of such plan. A work plan shall not be
6 required prior to the appointment of the temporary operator [pursuant to
7 clause (ii) of paragraph (a) of subdivision two of this section] if the
8 commissioner has determined that the immediate appointment of a tempo-
9 rary operator is necessary because public health or safety is in immi-
10 nent danger or there exists any condition or practice or a continuing
11 pattern of conditions or practices which poses imminent danger to the
12 health or safety of any patient or resident of the facility. Where such
13 immediate appointment has been found to be necessary, the temporary
14 operator shall provide the commissioner with a work plan satisfactory to
15 the commissioner as soon as practicable.

16 (b) The temporary operator shall use his or her best efforts to imple-
17 ment the work plan provided to the commissioner, if applicable, and to
18 correct or eliminate any deficiencies or financial instability in the
19 facility and to promote the quality and accessibility of health care
20 services in the community served by the facility. Such correction or
21 elimination of deficiencies or serious financial instability shall not
22 include major alterations of the physical structure of the facility.
23 During the term of his or her appointment, the temporary operator shall
24 have the sole authority to direct the management of the facility in all
25 aspects of operation and shall be afforded full access to the accounts
26 and records of the facility. The temporary operator shall, during this
27 period, operate the facility in such a manner as to promote safety and
28 the quality and accessibility of health care services or residential

1 care in the community served by the facility. The temporary operator
2 shall have the power to let contracts therefor or incur expenses on
3 behalf of the facility, provided that where individual items of repairs,
4 improvements or supplies exceed ten thousand dollars, the temporary
5 operator shall obtain price quotations from at least three reputable
6 sources. The temporary operator shall not be required to file any bond.
7 No security interest in any real or personal property comprising the
8 facility or contained within the facility, or in any fixture of the
9 facility, shall be impaired or diminished in priority by the temporary
10 operator. Neither the temporary operator nor the department shall engage
11 in any activity that constitutes a confiscation of property without the
12 payment of fair compensation.

13 5. (a) The initial term of the appointment of the temporary operator
14 shall not exceed one hundred eighty days. After one hundred eighty days,
15 if the commissioner determines that termination of the temporary opera-
16 tor would cause significant deterioration of the quality of, or access
17 to, health care or residential care in the community or that reappoint-
18 ment is necessary to correct the conditions within the facility that
19 [seriously] endanger the life, health or safety of residents or
20 patients, or the financial instability that required the appointment of
21 the temporary operator, the commissioner may authorize up to two addi-
22 tional ninety-day terms.

23 (b) Upon the completion of the two ninety-day terms referenced in
24 paragraph (a) of this subdivision,

25 (i) if the established operator is the debtor in a bankruptcy proceed-
26 ing, and the commissioner determines that the temporary operator
27 requires additional terms to operate the facility during the pendency of
28 the bankruptcy proceeding and to carry out any plan resulting from the

1 proceeding, the commissioner may reappoint the temporary operator for
2 additional ninety-day terms until the termination of the bankruptcy
3 proceeding, provided that the commissioner shall provide for notice and
4 a hearing as set forth in subdivision six of this section; or

5 (ii) if the established operator requests the reappointment of the
6 temporary operator, the commissioner may reappoint the temporary opera-
7 tor for one additional ninety-day term, pursuant to an agreement between
8 the established operator, the temporary operator and the department.

9 (c) Within fourteen days prior to the termination of each term of the
10 appointment of the temporary operator, the temporary operator shall
11 submit to the commissioner and to the established operator a report
12 describing:

13 (i) the actions taken during the appointment to address such deficien-
14 cies and financial instability,

15 (ii) objectives for the continuation of the temporary operatorship if
16 necessary and a schedule for satisfaction of such objectives,

17 (iii) recommended actions for the ongoing operation of the facility
18 subsequent to the term of the temporary operator including recommenda-
19 tions regarding the proper management of the facility and ongoing agree-
20 ments with individuals or entities with proper delegation of management
21 authority; and

22 (iv) with respect to the first ninety-day term referenced in paragraph
23 (a) of this subdivision, a plan for sustainable operation to avoid
24 closure, or transformation of the facility which may include any option
25 permissible under this chapter or the social services law and implement-
26 ing regulations thereof. The report shall reflect best efforts to
27 produce a full and complete accounting.

1 (d) The term of the initial appointment and of any subsequent reap-
2 pointment may be terminated prior to the expiration of the designated
3 term, if the established operator and the commissioner agree on a plan
4 of correction and the implementation of such plan.

5 6. (a) The commissioner, upon making a determination to appoint a
6 temporary operator pursuant to paragraph (a) of subdivision two of this
7 section shall, prior to the commencement of the appointment, cause the
8 established operator of the facility to be notified of the determination
9 by registered or certified mail addressed to the principal office of the
10 established operator. Such notification shall include a detailed
11 description of the findings underlying the determination to appoint a
12 temporary operator, and the date and time of a required meeting with the
13 commissioner and/or his or her designee within ten business days of the
14 date of such notice. At such meeting, the established operator shall
15 have the opportunity to review and discuss all relevant findings. At
16 such meeting or within ten additional business days, the commissioner
17 and the established operator shall attempt to develop a mutually satis-
18 factory plan of correction and schedule for implementation. In the event
19 such plan of correction is agreed upon, the commissioner shall notify
20 the established operator that the commissioner no longer intends to
21 appoint a temporary operator. A meeting shall not be required prior to
22 the appointment of the temporary operator [pursuant to clause (ii) of
23 paragraph (a) of subdivision two of this section] if the commissioner
24 has determined that the immediate appointment of a temporary operator is
25 necessary because public health or safety is in imminent danger or there
26 exists any condition or practice or a continuing pattern of conditions
27 or practices which poses imminent danger to the health or safety of any
28 patient or resident of the facility. Where such immediate appointment

1 has been found to be necessary, the commissioner shall provide the
2 established operator with a notice as required under this paragraph on
3 the date of the appointment of the temporary operator.

4 (b) Should the commissioner and the established operator be unable to
5 establish a plan of correction pursuant to paragraph (a) of this subdivi-
6 sion, or should the established operator fail to respond to the
7 commissioner's initial notification, a temporary operator shall be
8 appointed as soon as is practicable and shall operate pursuant to the
9 provisions of this section.

10 (c) The established operator shall be afforded an opportunity for an
11 administrative hearing on the commissioner's determination to appoint a
12 temporary operator. Such administrative hearing shall occur prior to
13 such appointment, except that the hearing shall not be required prior to
14 the appointment of the temporary operator [pursuant to clause (ii) of
15 paragraph (a) of subdivision two of this section] if the commissioner
16 has determined that the immediate appointment of a temporary operator is
17 necessary because public health or safety is in imminent danger or there
18 exists any condition or practice or a continuing pattern of conditions
19 or practices which poses imminent danger to the health or safety of any
20 patient or resident of the facility. An administrative hearing as
21 provided for under this paragraph shall begin no later than sixty days
22 from the date of the notice to the established operator and shall not be
23 extended without the consent of both parties. Any such hearing shall be
24 strictly limited to the issue of whether the determination of the
25 commissioner to appoint a temporary operator is supported by substantial
26 evidence. A copy of the decision shall be sent to the established opera-
27 tor.

1 (d) The commissioner shall, upon making a determination to reappoint a
2 temporary operator for the first of an additional ninety-day term pursu-
3 ant to paragraph (a) of subdivision five of this section, cause the
4 established operator of the facility to be notified of the determination
5 by registered or certified mail addressed to the principal office of the
6 established operator. If the commissioner determines that additional
7 reappointments pursuant to subparagraph (i) of paragraph (b) of subdivi-
8 sion five of this section are required, the commissioner shall again
9 cause the established operator of the facility to be notified of such
10 determination by registered or certified mail addressed to the principal
11 office of the established operator at the commencement of the first of
12 every two additional terms. Upon receipt of such notification at the
13 principal office of the established operator and before the expiration
14 of ten days thereafter, the established operator may request an adminis-
15 trative hearing on the determination to begin no later than sixty days
16 from the date of the reappointment of the temporary operator. Any such
17 hearing shall be strictly limited to the issue of whether the determi-
18 nation of the commissioner to reappoint the temporary operator is
19 supported by substantial evidence.

20 § 14. Section 2810 of the public health law is amended by adding a new
21 subdivision 2-a to read as follows:

22 2-a. Notwithstanding any other law to the contrary, the commissioner
23 may appoint an emergency receiver, upon no less than twenty-four hours'
24 notice to the operator of a facility, upon a determination that public
25 health or safety is in imminent danger or that there exists any condi-
26 tion or practice or a continuing pattern of conditions or practices that
27 poses imminent danger to the health or safety of any patient or resident
28 of such facility. Such an emergency receiver shall serve until a final

1 determination has been made upon an order to show cause filed in accord-
2 ance with subdivision two of this section; provided, however, that an
3 application for such an order shall be made to the supreme court within
4 thirty days of the appointment of such emergency receiver.

5 § 15. Severability. If any provision of this act, or any application
6 of any provision of this act, is held to be invalid, that shall not
7 affect the validity or effectiveness of any other provision of this act
8 or any other application of any provision of this act.

9 § 16. This act shall take effect on the one hundred eightieth day
10 after it shall have become a law; provided that the amendments to subdi-
11 vision 1 of section 12 of the public health law made by section one of
12 this act shall be subject to the expiration and reversion of such subdi-
13 vision pursuant to section 32 of part A of chapter 58 of the laws of
14 2008, as amended, when upon such date the provisions of section two of
15 this act shall take effect; and provided further that the amendments to
16 subdivision 2 of section 12-b of the public health law made by section
17 three of this act shall be subject to the expiration and reversion of
18 such subdivision pursuant to section 32 of part A of chapter 58 of the
19 laws of 2008, as amended, when upon such date the provisions of section
20 four of this act shall take effect. Effective immediately, the addition,
21 amendment and/or repeal of any rule, regulation, or emergency regulation
22 necessary for the implementation of this act on its effective date are
23 authorized to be made and completed on or before such effective date.